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8 Of Attorneys for Plaintiff Daniel Collins

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF OREGON

11 DANIEL COLLINS

) Civil Case No. **3:12-cv-01120**

12 Plaintiff,

)

) COMPLAINT FOR VIOLATION OF CIVIL

13 vs.

)

) RIGHTS, ASSAULT, BATTERY, FALSE

)

) IMPRISONMENT, NEGLIGENCE

14 CITY OF PORTLAND, a municipal

)

15 corporation, DARRELL SHAW, an individual,

)

16 MATTHEW DELENIKOS, an individual,

)

17 GREGORY BURN, an individual, DAVID

)

18 ABRAHAMSON, an individual

)

19 Defendants.

20 Plaintiff alleges:

21 **INTRODUCTION**

22 1.

23 This action is brought on behalf of plaintiff Daniel Collins, pursuant to the Civil Rights
24 Act, 42 U.S.C. § 1983 and various state law tort claims.

JURISDICTION

2.

Jurisdiction is conferred on this court by 28 U.S.C. § 1331 and 1343, Federal Question Jurisdiction.

3.

Venue is proper in this District Court, because the events which gave rise to Plaintiff's claim occurred within this district.

THE PARTIES

4.

Plaintiff Daniel Collins is an individual who is now, and at all relevant times has been, residing in Multnomah County, Oregon, and the cause of action arose in Multnomah County, Oregon.

5.

Defendant City of Portland is now, and at all relevant times has been, a municipality duly incorporated under the laws of the State of Oregon.

6.

Defendant Darrell Shaw is now, and at all relevant times has been, a police officer working under color of law for the Portland Police Bureau, and employed by Defendant City of Portland.

1 7.

2 Defendant Matthew Delenikos is now, and at all relevant times has been, a police officer
3 working under color of law for the Portland Police Bureau, and employed by Defendant City of
4 Portland.

5 8.

6 Defendant Gregory Burn is now, and at all relevant times has been, a police officer
7 working under color of law for the Portland Police Bureau, and employed by Defendant City of
8 Portland.
9

10 9.

11 Defendant David Abrahamson is now, and at all relevant times has been, a police officer
12 working under color of law for the Portland Police Bureau, and employed by Defendant City of
13 Portland.

14 **FACTS**

15 10.

16 On December 24, 2010, plaintiff Collins was at the Barracuda nightclub, a business
17 establishment that was operating in downtown Portland, Oregon.
18

19 11.

20 On December 24, 2010, members of the Portland Police Bureau were called to the
21 Barracuda in response to a physical altercation between patrons of the business. Defendants
22 Darrell Shaw, Matthew Delenikos, Gregory Burn, and David Abrahamson responded in their
23 official capacities as police officers.
24

12.

Plaintiff Collins was not involved in the physical altercation that was the subject of the police call in any way.

13.

On December 24, 2010, as plaintiff Collins was trying to leave the Barracuda, defendants Shaw, Delenikos, Burn, and Abrahamson, acting together, and without probable cause or otherwise sufficient reason to do so, physically and violently took plaintiff Collins to the ground in the foyer of the establishment, causing plaintiff Collins to strike a metal post, and pinning plaintiff Collins's leg and ankle against the post. Plaintiff Collins was unarmed and had committed no crimes. The acts of the defendants placed plaintiff Collins in extreme fear and injured him, causing plaintiff Collins significant pain.

14.

While plaintiff Collins was on the ground, the individual defendants, and defendant Shaw in particular, repeatedly punched plaintiff Collins in the face with a closed fist. These acts of the defendants injured plaintiff Collins and caused him significant pain.

15.

While plaintiff Collins was on the ground, the individual defendants, and defendant Burn in particular, repeatedly delivered knee-strikes into plaintiff Collins's back. These acts of the defendants injured plaintiff Collins and caused him significant pain.

16.

While plaintiff Collins was on the ground, defendant Delenikos repeatedly discharged his Taser, a weapon which delivers an incapacitating electric shock, at plaintiff Collins, striking

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1 plaintiff Collins in the back and neck, and delivering multiple electric shocks which caused
2 plaintiff Collins significant pain.

3 17.

4 While plaintiff Collins was on the ground, the individual defendants repeatedly kicked
5 and stomped on plaintiff Collins's head and body, causing plaintiff Collins significant pain.

6 18.

7 The violent beating and electric shocks delivered by the individual defendants caused
8 plaintiff Collins to pass out. When he awoke, he was lying in the middle of the street, face down,
9 in handcuffs. An ambulance transported plaintiff Collins to the hospital at Oregon Health &
10 Science University, where he was treated for the injuries he received from the beating and assault
11 by individual defendants.

12 19.

13 While plaintiff Collins was recovering at the hospital, defendants Shaw and Delenikos
14 contacted him and issued plaintiff Collins a criminal citation charging him with Interfering with a
15 Peace Officer (ORS 162.247) and Resisting Arrest (ORS 162.315).

16 20.

17 The Multnomah County District Attorney did not pursue charges of any kind against
18 plaintiff Collins as a result of the incident.

19 FIRST CLAIM FOR RELIEF

20 DEPRIVATION OF CIVIL RIGHTS ARISING FROM UNLAWFUL USE OF FORCE

21 21.

22 Paragraphs 1-20 are incorporated herein by reference as though fully set forth.

23 Page 5 COMPLAINT

22.

The actions of defendants Shaw, Delenikos, Burn, Abrahamson, and the City of Portland deprived plaintiff Collins, a citizen and resident of the United States, of rights guaranteed to him in the United States Constitution in that plaintiff Collins was denied his constitutional right be free from police use of unnecessary, unreasonable, and excessive force without due process of law, and his constitutional right not to be subjected to physical torture and mistreatment.

23.

The deprivation of constitutional rights set forth in paragraph 18, above, was caused by the City of Portland in the following manner:

A. In having a policy and/or custom and practice of permitting Portland police officers, including the defendant officers, to use unjustified and unnecessary force, including the discharging of Tasers, when a citizen is not armed and not otherwise engaged in any resistance;

B. In failing to properly train and supervise police officers, including the defendant officers, in the tactics to be utilized by police officers in using force, including the discharging of Tasers;

C. In having a policy and/or custom and practice of ratifying and approving the use of illegal, unreasonable, and unnecessary force on citizens by Portland police officers without implementing methods and training necessary to prevent future injuries caused by unnecessary uses of force;

1 D. In having a policy and/or custom and practice of failing to terminate or
2 take disciplinary action against police officers who use illegal, unreasonable, and unnecessary
3 force on citizens;

4 E. In having a policy and/or custom and practice permitting the utilization of
5 unnecessary force by Portland police officers that provides less protection to citizens than the
6 protections guaranteed in the United States Constitution;
7

8 24.

9 The above described policies, customs, and practices demonstrate a deliberate
10 indifference to the constitutional rights of citizens, which caused the violation of plaintiff
11 Collins's rights.

12 25.

13 As a direct result of the misconduct of defendants Shaw, Delenikos, Burn, Abrahamson,
14 and City of Portland, as set forth above, plaintiff Collins suffers and endures conscious pain and
15 suffering, all to his damage in an amount to be proven at trial.

16 26.

17 Plaintiff Collins is entitled to his necessary and reasonable attorney fees and costs
18 incurred in the prosecution of this action.
19

20 SECOND CLAIM FOR RELIEF

21 DEPRIVATION OF CIVIL RIGHTS ARISING OUT OF UNLAWFUL SEIZURE

22 27.

23 Paragraphs 1-20 are incorporated herein by reference as though fully set forth.
24

28.

On December 24, 2010, defendants Shaw, Delenikos, Burn, and Abrahamson, acting under color of state law, seized and arrested plaintiff Collins. Said seizure and arrest was without probable cause that plaintiff Collins had committed any crime.

29.

Defendants Shaw, Delenikos, Burn, Abrahamson, and City of Portland deprived plaintiff Collins, a U.S. citizen, of rights guaranteed him in the United States Constitution in that plaintiff Collins was denied his constitutionally protected right to be free from deprivation of liberty without due process of law and his constitutional right to be free from arrest without probable cause.

30.

The deprivations of constitutional rights set forth in the paragraph 25, above were caused by the City of Portland in the following manner:

A. In having a policy and/or custom and practice of permitting Portland police officers to make arrests and seize citizens without having probable cause that a crime has been committed.

B. In having a policy and/or custom and practice of failing to terminate or take disciplinary action against police officers who make arrests and unlawful seizures without probable cause.

C. In having a policy and/or custom and practice of failing to properly train Portland police officers on what constitutes probable cause and the need to establish it prior to making an arrest or subjecting a citizen to seizure.

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1 31.

2 The above-described policies, customs, and practices demonstrate a deliberate
3 indifference to the constitutional rights of citizens, which caused the violation of plaintiff
4 Collins's rights.

5 32.

6 As a direct result of the misconduct of defendants Shaw, Delenikos, Burn, Abrahamson,
7 and City of Portland as set forth above, plaintiff Collins was subjected to an unlawful seizure, all
8 to his damage in an amount to be proven at trial.

9 33.

10 Plaintiff Collins is entitled to his necessary and reasonable attorney fees and costs
11 incurred herein.

12
13 THIRD CLAIM FOR RELIEF

14 (Battery)

15 34.

16 Paragraphs 1-20 are incorporated herein by reference as though fully set forth.

17 35.

18 Defendants Shaw, Delenikos, Burn, and Abrahamson, while acting within the course and
19 scope of their employment with defendant City of Portland, intentionally did violence and caused
20 offensive physical contact to plaintiff Collins, without justification or right to do so, in one or
21 more of the following particulars:
22

23 A. In taking plaintiff to the ground;

24 B. In repeatedly punching plaintiff in the face;

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1 C. In repeatedly striking plaintiff in the back with knee strikes;

2 D. In placing plaintiff in handcuffs;

3 E. In repeatedly discharging a Taser against plaintiff;

4 FOURTH CLAIM FOR RELIEF

5 (Assault)

6 36.

7 Paragraphs 1-20 are incorporated herein by reference as though fully set forth.

8 37.

9 Defendants Shaw, Delenikos, Burn, and Abrahamson, while acting within the course and
10 scope of their employment with defendant City of Portland, without justification or right, caused
11 plaintiff Collins to reasonably fear imminent harm to his health and safety and additional use of
12 force against him by engaging in one or more of the following particular conduct:

13 A. In taking plaintiff to the ground;

14 B. In repeatedly punching plaintiff in the face;

15 C. In repeatedly striking plaintiff in the back with knee strikes;

16 D. In repeatedly discharging a Taser against plaintiff;

17 FIFTH CLAIM FOR RELIEF

18 (False Imprisonment)

19 38.

20 Paragraphs 1-20 are incorporated herein by reference as though full set forth.

39.

As a result of the policies, practices, and orders of the City of Portland, and due to the actions of defendants Shaw, Delenikos, Burn, and Abrahamson, plaintiff Collins was falsely imprisoned in violation of Oregon law.

40.

Defendants, in taking plaintiff Collins into custody under asserted legal authority and causing him to be handcuffed and held, with no grounds to do so, intentionally and unlawfully confined plaintiff Collins using an assertion of legal authority, and plaintiff Collins was aware of the confinement.

SIXTH CLAIM FOR RELIEF

(Negligence)

41.

Paragraphs 1-20 are incorporated herein by reference as though full set forth.

42.

Defendants, individually and together, owed plaintiff Collins a duty to use due care at or about the times of the aforementioned incidents.

43.

Defendants, individually and together, owed plaintiff Collins a duty to intervene and to prevent application of illegal use of force, resulting in injuries and damages to plaintiff Collins as alleged herein.

44.

In committing the aforementioned acts and/or omissions, defendants, individually and together, negligently breached said duty to use due care, directly and proximately resulting in the injuries and damages to plaintiff Collins as alleged herein.

WHEREFORE, plaintiff Collins prays for judgment against defendants as follows:

On the FIRST CLAIM FOR RELIEF, against defendants for general and special damages in an amount to be proven at trial and for attorney fees and costs incurred herein.

On the SECOND CLAIM FOR RELIEF, against defendants for general and special damages in an amount to be proven at trial and for attorney fees and costs incurred herein.

On the THIRD CLAIM FOR RELIEF, against defendants for general and special damages in an amount to be proven at trial and for costs incurred herein.

On the FOURTH CLAIM FOR RELIEF, against defendants for general and special damages in an amount to be proven at trial and for costs incurred herein.

On the FIFTH CLAIM FOR RELIEF, against defendants for general and special damages in an amount to be proven at trial and for costs incurred herein.

/// /// ///

1 On the SIXTH CLAIM FOR RELIEF, against defendants for general and special damages
2 in an amount to be proven at trial and for costs incurred herein.

3 DATED this _____ day of June, 2012.
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7 _____
Matthew McHenry, OSB No. 04357
8 Attorney for Plaintiff
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